

IFW 3625

Attorney Docket No.: 3660P015X2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

Piyush Gupta

Application No.: 09/715,837

Filed: November 16, 2000

For: METHOD AND SYSTEM FOR
CONDUCTING RESERVE REQUEST
REVERSE AUCTION FOR
ELECTRONIC COMMERCE

Examiner: Garg, Yogesh C.

Art Unit: 3625

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450

on January 31, 2006
Date of Deposit
Christopher Luer P. Marshall
Name of Person Mailing Correspondence
2p. Marshall Signature
1/31/2006 Date

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CHANGE OF CORRESPONDENCE ADDRESS,
POWER OF ATTORNEY, AND REVOCATION OF PREVIOUS POWERS

Please direct all future correspondence regarding the above-referenced patent application to Lester J. Vincent, Reg. No. 31,460, Blakely, Sokoloff, Taylor, & Zafman LLP, 12400 Wilshire Boulevard, Seventh Floor, Los Angeles, California 90025, and direct all telephone calls to the same at (408) 720-8300.

Softface, Inc. ("assignee"), a California corporation having a place of business at 807 11th Avenue, Sunnyvale, CA 94089, USA, which is a subsidiary of Ariba, Inc., a Delaware Corporation having a place of business at 807 11th Avenue, Sunnyvale, CA 94089, USA, hereby states that to the best of assignee's knowledge and belief it is the assignee of the entire right, title, and interest in and to the above-referenced patent and represents that the undersigned is a representative authorized and empowered to sign on behalf of the assignee. Upon information and belief, the following assignment documents evidence the placement of title in the assignee:

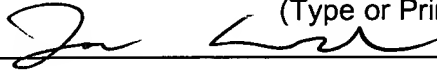
- (1) an assignment recorded at reel 011820 and frame 0038 at the U.S. Patent and Trademark Office;

- (2) an Asset Purchase Agreement dated November 21, 2003 (a photocopy of which is attached hereto), a photocopy of which was mailed to the U.S. Patent and Trademark Office on January 6, 2006; and
- (3) an Agreement of Merger dated April 16, 2004 (a photocopy of which is attached hereto), a photocopy of which was mailed to the U.S. Patent and Trademark Office on January 9, 2006.

Pursuant to 37 C.F.R. §§ 1.36 and 3.71, the assignee hereby revokes all powers of attorney previously given and appoints the practitioners associated with **Customer Number 08791** as the assignee's respective patent attorneys and patent agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Pursuant to 37 C.F.R. § 3.71, the assignee hereby states that prosecution of the above-referenced patent application is to be conducted to the exclusion of the inventor(s).

Assignee of Interest: Softface, Inc. a California corporation that is
a subsidiary of Ariba, Inc.

Dated: 1/23/06 By: 
(Type or Print)

Name: Landon Edmond
(Type or Print)

Title: Senior Counsel for Ariba, Inc.
(parent corporation with respect to Softface, Inc.)
(Type or Print)

Address of Assignee of Interest:

807 11th Avenue
Sunnyvale, CA 94089, USA

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: January 31, 2006

By 

Name: Lester J. Vincent
(Type)

Reg. No.: 31,460

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, California 90025
(408) 720-8300



Recordation Form Cover Sheet
PATENTS ONLY

Attorney Docket No.: 3660P015X2

To the Director of the United States Patent and Trademark Office. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Softface, Inc.
(a California Corporation)
2121 N. California Boulevard, Suite 570
Walnut Creek, CA 94596

Additional name(s) of conveying party(ies) attached?

☒ No ☐ Yes

2. Name and address of receiving party(ies):

Name: **Softface, Inc.**

(a California Corporation that is a subsidiary of
Ariba, Inc.)

Internal Address: _____

Street Address: **807 11th Avenue**

Building 3, 2nd Floor

City: **Sunnyvale** State/Province: **California** Zip: **94089**

Country: **USA**

Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of Conveyance

☐ Assignment

☒ Merger

☐ Security Agreement

☐ Change of Name

☐ Other:

Execution Date(s): **04.16.2004**

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s): **09/715,837**

B. Patent No.(s): _____

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Lester J. Vincent, Reg. No. 31,460

Name: **Blakely, Sokoloff, Taylor & Zafman LLP**

Internal Address: _____

Street Address: **12400 Wilshire Boulevard, 7th Floor**
Los Angeles, California 90025

6. Total number of applications and patents involved: **1**

7. Total Fee (37 CFR 3.41).....\$ **40.00**

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit Account Number:

02-2666

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Lester J. Vincent, Reg. No. 31,460

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: **16**

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Director of the United States Patent and Trademark Office

P.O. Box 1450

Alexandria, Virginia 22313-1450



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 14 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR 16 2004



Kevin Shelley

Secretary of State

APR 15 2004

AGREEMENT OF MERGER

KEVIN SHELLEY
Secretary of State

AGREEMENT OF MERGER (this "Agreement"), dated as of April 15, 2004, by and among Ariba, Inc., a corporation duly organized and existing under the laws of the State of Delaware ("Parent"), Crystal Merger Corp., a corporation duly organized and existing under the laws of the State of California and a wholly owned subsidiary of Parent ("Merger Sub"), and Softface, Inc., a corporation duly organized and existing under the laws of the State of California (the "Company").

WITNESSETH:

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company deem it advisable and in the best interests of their respective corporations and in the best interests of the shareholders of Parent, Merger Sub and the Company that Merger Sub be merged with and into the Company in accordance with this Agreement (the "Merger");

WHEREAS, to effectuate the Merger, Parent, Merger Sub and the Company have entered into that certain Agreement and Plan of Merger and Reorganization, dated as of March 31, 2004, by and among Parent, Merger Sub, the Company and, solely with respect to Sections 2.07(d), 2.09, 6.11, 8.03, 9.04 and 10.01(c) thereof, Jonathan Berek, as Shareholders' Representative (the "Agreement and Plan of Merger");

WHEREAS, the Agreement and Plan of Merger and this Agreement are intended to be construed together in order to effectuate their purposes; and

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company, and pursuant to the California Corporations Code, the shareholders of the Company and Merger Sub, have duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits to be derived from this Agreement, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

THE MERGER

1.1 Merger. Effective Time of the Merger. Subject to the terms and conditions of this Agreement and pursuant to the California Corporations Code, Merger Sub will be merged with and into the Company, with the Company to be the surviving corporation (the Company after the Merger is sometimes referred to herein as the "Surviving Corporation"). The Merger will be effective (the "Effective Time") on the date upon which this Agreement and all required officers' certificates and other appropriate documents are accepted for filing by the Secretary of State of the State of California pursuant to Section 1103 of the California Corporations Code.

1.2 Effects of the Merger. At the Effective Time, the Merger will have all of the effects provided by applicable law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time: (a) the separate existence of Merger Sub will cease and Merger Sub will be merged with and into the Company, and the Company will become the Surviving Corporation pursuant to the terms of this Agreement; (b) the Third Amended and Restated Articles of Incorporation of the Company will be amended and restated as set forth on Exhibit A attached hereto; and (c) the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of the Company and Merger Sub shall become debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

1.3 Name. From and after the Effective Time, the name of the Surviving Corporation will be Softface, Inc.

ARTICLE II

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE COMPANY AND MERGER SUB

2.1 Effect on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of any holder of shares of capital stock of the Company or Merger Sub:

(a) Conversion of Capital Stock of Merger Sub. Each share of Common Stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time will be converted into and exchanged for 1 (one) duly authorized, validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(b) Company Common Stock. Each share of Company Common Stock, no par value (the "Company Common Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Company Common Stock held in the treasury of the Company and each share of Company Common Stock held by Parent or any direct or indirect subsidiary of Parent or the Company immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(c) Company Preferred Stock. Each share of Series A Preferred Stock, no par value, of the Company (the "Company Series A Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Series B Preferred Stock, no par value, of the Company (the "Company Series B Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Series C Preferred Stock, no par value, of the Company (the "Company Series C Preferred Stock"), collectively with the Company Series A Preferred Stock

and the Company Series B Preferred Stock, the "Company Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be converted into the right to receive such amount of cash equal to the quotient (calculated to five decimal places) obtained by dividing (x) the Aggregate Merger Consideration (as defined below) by (y) the Fully Diluted Series C Preferred Stock Amount (as defined below). Each share of Company Preferred Stock held in the treasury of the Company and each share of Company Preferred Stock held by Parent or any direct or indirect subsidiary of Parent or the Company immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. As used in this Agreement, the following terms have the following meanings:

(i) "Aggregate Merger Consideration" means \$6,840,000 less (x) the Company Merger Expenses and (y) the Withheld Amount.

(ii) "Cash Payment Reductions" means any payments by the Company or obligations of the Company to make payments to employees of the Company or otherwise, pursuant to existing contractual obligations that are triggered either solely as a result of the Merger or by a combination of the Merger and the occurrence of another event or events (which event or events are expressly set forth in the agreement in question). Payments made pursuant to the Company's Amended and Restated Employee Retention Plan shall not constitute Cash Payment Reductions or otherwise reduce the Aggregate Merger Consideration.

(iii) "Company Merger Expenses" means the sum of (x) Cash Payment Reductions and (y) Expense Reductions.

(iv) "Expense Reductions" means all third-party expenses incurred by the Company in connection with the Merger (including expenses incurred on behalf of the Company in connection with the Merger subsequent to the Effective Time).

(v) "Fully Diluted Series C Preferred Stock Amount" means that number of shares of Company Series C Preferred Stock equal to the sum of (x) the number of shares of Company Series C Preferred Stock issued and outstanding immediately prior to the Effective Time and (y) the number of shares of Company Series C Preferred Stock issuable upon exercise, conversion and/or exchange of all securities issued and outstanding immediately prior to the Effective Time that are exercisable, convertible and/or exchangeable for shares of Company Series C Preferred Stock, whether or not then exercisable, convertible and/or exchangeable and whether or not vested or contingent.

(vi) "Withheld Amount" means the amount of any losses for which Parent and/or its affiliates is entitled to indemnification under Article IX of the Agreement and Plan of Merger.

(d) Conversion of Company Options. At the Effective Time, all outstanding options to purchase shares of Company Common Stock which are not exercised prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(e) Conversion of Company Warrants. At the Effective Time, all outstanding warrants to purchase shares of Company Common Stock or Company Preferred Stock which are not exercised prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(f) Dissenters' Rights. If, as of the Effective Time, holders of the issued and outstanding shares of Company Common Stock and Company Preferred Stock are entitled to dissenters' rights pursuant to Chapter 13 of the California Corporations Code and have not lost such dissenters' rights in connection with the Merger (the "Dissenting Shares"), then such Dissenting Shares will not be treated in accordance with Section 2.1(b) and 2.1(c), above. All Dissenting Shares held by shareholders who have failed to perfect or who have lost or effectively withdrawn their rights to dissent shall thereupon be treated in accordance with Section 2.1(b) and 2.1(c), above.

2.2 No Further Rights in Company Common Stock and Company Preferred Stock. The treatment of Company Common Stock and Company Preferred Stock in accordance with Section 2.1(b)-(e), above, will be deemed to be in full satisfaction of all rights pertaining to such shares of Company Common Stock and Company Preferred Stock.

2.3 Supplementary Action. If, at any time after the Effective Time, any further assignments or assurances in law or any other things are necessary or desirable to vest or to perfect or confirm of record in the Surviving Corporation the title to any property or rights of either the Company or Merger Sub or otherwise to carry out the provisions of this Agreement, the officers and directors of the Surviving Corporation are hereby authorized and empowered, in the name of and on behalf of the Company and Merger Sub, to execute and deliver any and all things necessary or proper to vest or to perfect or confirm title to such property or rights in the Surviving Corporation, and otherwise to carry out the purposes and provisions of this Agreement.

ARTICLE III

TERMINATION

3.1 Termination. This Agreement may be terminated and the proposed Merger abandoned at any time prior to the Effective Time, whether before or after approval and adoption of the Merger and the Agreement and Plan of Merger by the respective shareholders of the Company and Merger Sub, by either party hereto upon (a) termination of the Agreement and Plan of Merger or (b) by the mutual consent of the Boards of Directors of the Company and Merger Sub.

ARTICLE IV

APPROVAL OF THE MERGER

4.1 The respective Boards of Directors of Parent, Merger Sub and the Company have duly approved and adopted this Agreement, the Agreement and Plan of Merger,

and the Merger. The holders of a majority of the shares of Company Common Stock and Company Preferred Stock, each voting as a separate class, have duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger. The holder of all the outstanding capital stock of Merger Sub has duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger.

ARTICLE V

MISCELLANEOUS

5.1. Entire Agreement; Amendments. This Agreement, the Agreement and Plan of Merger, and the schedules, exhibits and agreements referred to herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

5.2. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other parties hereto. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors, personal representatives and permitted assigns.

5.3. Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request for the purpose of carrying out or evidencing the transactions contemplated by this Agreement.

5.4. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed wholly within the State of California.


5.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon, and all of which together will constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

ARIBA, INC.

By: _____

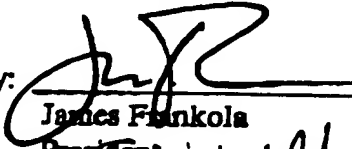

James Frankola
Executive Vice President and Chief
Financial Officer

By: _____


David Middler
Secretary

CRYSTAL MERGER CORP.

By: _____


James Frankola
President

By: _____


David Middler
Secretary

SOFTFACE, INC.

By: _____

Olivier Sermet
President

By: _____

Alexander Saldanha
Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

ARIBA, INC.

By: _____
James Frankola
Executive Vice President and Chief
Financial Officer

By: _____
David Middler
Secretary

CRYSTAL MERGER CORP.

By: _____
James Frankola
President

By: _____
David Middler
Secretary

SOFTFACE, INC.

By: _____

Olivier Sernet
President


By: _____

Alexander Saldanha
Secretary

Exhibit A

Fourth Amended and Restated Articles of Incorporation

**FOURTH AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
SOFTFACE, INC.**

The undersigned, James Frankola and David Middler, hereby certify that:

1. They are the duly appointed and acting President and Secretary, respectively, of this corporation.
2. The Third Amended and Restated Articles of Incorporation of this corporation shall be amended and restated to read in full as follows:

ONE: The name of this corporation is Softface, Inc.

TWO: The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

THREE: This corporation is authorized to issue one (1) class of stock to be designated "Common Stock." The total number of shares which this corporation is authorized to issue is One Thousand (1,000) shares, par value \$0.001 per share.

FOUR: Section 1. The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. This corporation is authorized to indemnify the directors and officers of this corporation to the fullest extent permissible under California law (as defined in Section 317(g) of the California Corporations Code or elsewhere).

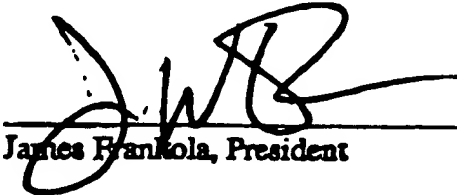
3. The foregoing Fourth Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing Fourth Amended and Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the Corporation entitled to vote with respect to the foregoing amendment and restatement was 1,000 shares of Common Stock. The number of shares voting in favor of the foregoing amendment and restatement equaled or exceeded the vote required, such required vote being a majority of the outstanding shares of Common Stock, voting as a separate class.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

The undersigned declare under penalty of perjury under the laws of the State of California that they have read the foregoing Certificate and that the matters set forth in the foregoing Certificate are true and correct of their own knowledge.

Executed at Sunnyvale, California on March 31, 2004.



James Frankola, President


David Middler, Secretary

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The undersigned declare under penalty of perjury under the laws of the State of California that they have read the foregoing Certificate and that the matters set forth in the foregoing Certificate are true and correct of their own knowledge.

Executed at Sunnyvale, California on March 31, 2004.

James Frankola, President



David Middler, Secretary

CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER
(SOFTFACE, INC.)

Olivier Sernet and Alexander Saldanha hereby certify that:


1. They are the President and the Secretary, respectively, of Softface, Inc., a California corporation (the "Company").
2. The Agreement of Merger by and among Ariba, Inc., a Delaware corporation ("Parent"), Crystal Merger Corp., a California corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and the Company in the form attached to this Certificate (the "Agreement of Merger"), was duly approved by the Board of Directors and by the shareholders of the Company. The Agreement of Merger provides for the statutory merger (the "Merger") of Merger Sub with and into the Company, with the Company to be the surviving corporation of the Merger.
3. The Company has authorized capital of 52,961,022 shares, 35,000,000 of which are designated Common Stock, no par value (the "Common Stock"), and 17,961,022 of which are designated Preferred Stock, no par value (the "Preferred Stock"), consisting of 1,358,450 shares of Series A Preferred Stock, 7,200,862 shares of Series B Preferred Stock and 9,401,710 shares of Series C Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the Merger was 6,025,275 shares. The number of shares of Series A Preferred Stock outstanding and entitled to vote upon the Merger was 1,358,450 shares. The number of shares of Series B Preferred Stock outstanding and entitled to vote upon the Merger was 5,414,184 shares. The number of shares of Series C Preferred Stock outstanding and entitled to vote upon the Merger was 8,979,888 shares.
4. The principal terms of the Agreement of Merger were approved by the shareholders of the Company by a vote that equaled or exceeded the vote required. The percentage vote required to approve the Agreement of Merger was the affirmative vote of the holders of a majority of the outstanding shares of the Common Stock and the Preferred Stock, voting as separate classes.

Each of the undersigned declares under penalty of perjury under the laws of the State of California that the statements set forth in this Certificate are true and correct to his own knowledge.

Dated: April 9, 2004



Olivier Sermet, President



Alexander Saldanha, Secretary

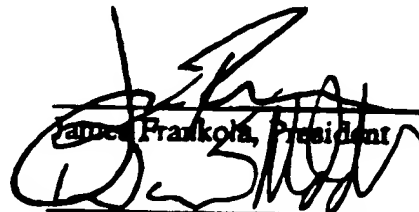
CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER
(CRYSTAL MERGER CORP.)

James Frankola and David Middler hereby certify that:

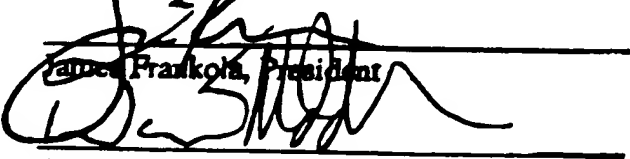
1. They are the President and the Secretary, respectively, of Crystal Merger Corp. ("Merger Sub"), a California corporation and wholly owned subsidiary of Ariba, Inc., a Delaware corporation ("Parent").
2. The Agreement of Merger by and among Parent, Merger Sub, and Softface, Inc., a California corporation (the "Company"), in the form attached to this Certificate (the "Agreement of Merger"), was duly approved by the Board of Directors and by the sole shareholder of Merger Sub. The Agreement of Merger provides for the statutory merger (the "Merger") of Merger Sub with and into the Company, with the Company to be the surviving corporation of the Merger.
3. Merger Sub has only one class of stock, which is Common Stock, par value \$0.001 per share (the "Common Stock"), and only the Common Stock was entitled to vote on the Agreement of Merger. The percentage vote required to approve the Agreement of Merger was the affirmative vote of a majority of the outstanding shares of Common Stock. The number of shares of Common Stock outstanding and entitled to vote on the Agreement of Merger was 1,000 shares. The principal terms of the Agreement of Merger were approved by the sole shareholder of Merger Sub by the vote of a number of shares of Common Stock that equaled or exceeded the vote required. The stockholder approval was by written consent of the holder of one hundred percent (100%) of the outstanding shares of Common Stock.
4. No vote of the stockholders of Parent was required under applicable law.

Each of the undersigned declares under penalty of perjury under the laws of the State of California that the statements set forth in this Certificate are true and correct to his own knowledge.

Dated: April 9, 2004



James Frankola, President



David Middler, Secretary





Recordation Form Cover Sheet
PATENTS ONLY

Attorney Docket No.: 3660P015X2

To the Director of the United States Patent and Trademark Office. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

LiquidPrice.com, Inc.
(a Delaware Corporation)

Additional name(s) of conveying party(ies) attached?

☒ No ☐ Yes

2. Name and address of receiving party(ies):

Name: **Softface, Inc.**

(a California Corporation)

Internal Address: _____

3. Nature of Conveyance

☐ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☒ Other: **(Asset Purchase Agreement (Redacted))**

Street Address: **2121 N. California Blvd., Ste. 570**

City: **Walnut Creek** State/Province: **California** Zip: **94596**

Country: **USA**

Execution Date(s): **11.21.2003**

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s): **09/715,837**

B. Patent No.(s): _____

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Lester J. Vincent, Reg. No. 31,460

Name: **Blakely, Sokoloff, Taylor & Zafman LLP**

Internal Address: _____

Street Address: **12400 Wilshire Boulevard, 7th Floor**

Los Angeles, California 90025

6. Total number of applications and patents involved: **1**

7. Total Fee (37 CFR 3.41).....\$ **40.00**

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit Account Number:

02-2666

(Attach duplicate copy of this page if paying by deposit account)

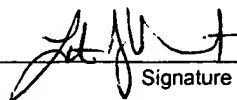
DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Lester J. Vincent, Reg. No. 31,460

Name of Person Signing


Signature

January 6, 2006
Date

Total number of pages including cover sheet, attachments, and documents: **53**

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Director of the United States Patent and Trademark Office

P.O. Box 1450

Alexandria, Virginia 22313-1450

REDACTED

ASSET PURCHASE AGREEMENT

by and between

SOFTFACE, INC.

and

LIQUIDPRICE.COM, INC.

November 21, 2003

REDACTED

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "*Agreement*") is made as of November 21, 2003 (the "*Agreement Date*"), by and between Softface, Inc., a California corporation ("*Buyer*") and LiquidPrice.com, Inc., a Delaware corporation ("*Seller*").

RECITALS

A.

B. Seller desires to sell and assign to Buyer, and Buyer desires to purchase and acquire from Seller, all of Seller's rights, title and interest in certain assets (including software, technology, product designs, contracts, capital equipment and intellectual properties) of Seller related to the Business, on the terms and conditions set forth in this Agreement.

C.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, Buyer and Seller hereby agree as follows:

1. PURCHASE AND SALE OF ASSETS.

1.1 **Agreement to Sell and Purchase Assets.** Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, Seller agrees to sell, assign, transfer, convey and deliver to Buyer at the Closing (as defined in Section 2.3 below), and Buyer agrees to purchase and acquire from Seller at the Closing, all of Seller's right, title and interest in and to the Purchased Assets (as defined in Section 1.2 below). The Purchased Assets will be sold, assigned, transferred and conveyed to Buyer on the Closing Date (as defined in Section 2.3 below), free and clear of all mortgages, pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements and all claims or agreements of any nature whatsoever (collectively "*Encumbrances*").

1.2 **Purchased Assets Defined.** As used in this Agreement, the term "*Purchased Assets*" means, collectively, other than the Excluded Assets (as defined in Section 1.3 below), all of the tangible and intangible assets, rights and properties owned by or licensed or leased to Seller that are used in or with respect to the Business wherever situated, as the same exists on the Closing Date, which include without limitation the following:

(a) **Assigned Contracts.**

REDACTED

(b) Software and Software Designs.

(c) Software Tools and Environments.

(d) Documentation.

(e) Intellectual Property Rights. All of Seller's worldwide rights, claims and interests in or to any and all of the following: (i) all patents and patent applications, (ii) all trademarks (whether or not registered), trade names, trade dress, logos, service marks (whether or not registered), all registrations and applications relating to the foregoing, and the goodwill associated therewith and symbolized thereby, (iii) all copyrights (whether or not registered), copyright registrations, moral rights and works of authorship, (iv) all know-how, processes, formulae, technical data, techniques, research records, confidential business information, inventions (whether or not patented or patentable), trade secrets, data bases and rights in data,

and other proprietary information, and other intellectual property rights (collectively, the "*Intellectual Property*"), that relates in whole or in part to the Business or to Source Manager or that may be necessary to give Buyer the exclusive right to hold itself out as successor to the Business the Software, the Tools, the Documentation, and the Business Records, collectively the "*SM Intellectual Property*").

(f) Business Records.

(g) Tangible Assets.

(h) Other Assets and Rights.

1.3 Excluded Assets.

(a) Excluded Contracts.

(b) Excluded Liabilities.

(c) Other Excluded Assets.

1.4 Asset Transfer; Passage of Title; Delivery.

(a) Title Passage. Upon the Closing, title to all of the Purchased Assets shall pass to Buyer, and Seller shall deliver to Buyer possession of all of the Purchased Assets and shall further deliver to Buyer proper assignments, conveyances and bills of sale sufficient to convey to Buyer good and marketable title to all the Purchased Assets, free and clear of all Encumbrances, as well as such other instruments of conveyance as counsel for Buyer may reasonably deem necessary or desirable (both at and after the Closing) to effect or evidence the transfers contemplated hereby.

REDACTED

(b) Delivery of Purchased Assets. On or before the Closing, Seller shall deliver the Purchased Assets to Buyer at Seller's principal place of business or at such other location and times and by such other means as are agreed by the parties. Upon the request of Buyer, Seller will transfer electronically all Purchased Assets that are transferable in electronic form, and Seller agrees that it will transfer all source code only in electronic form (unless Buyer otherwise requests), and represents that all source code is readily transferable in electronic form.

2. PURCHASE PRICE; CLOSING.

2.1 Purchase Price.

2.2 Tax Matters.

2.3 Closing. The consummation of the purchase and sale of the Purchased Assets contemplated hereby will take place at a closing to be held at the offices of Buyer's counsel, Fenwick & West LLP, Embarcadero Center West, 275 Battery Street, San Francisco, California (the "*Closing*") on the first business day following the day that all conditions to the Closing set forth in Sections 7.1 and 7.2 have been satisfied or waived in accordance with this Agreement, or such other place, time and date (or by such other means, including a remote Closing wherein the relevant documents are delivered and exchanged by means of facsimile, mail or courier) as Seller and Buyer may mutually agree (the day on which the Closing takes place being referred to herein as the "*Closing Date*").

3. OBLIGATIONS ASSUMED.

3.1 Liabilities.

REDACTED

3.2 Liabilities and Obligations Not Assumed.

REDACTED

3.3 No Obligations to Third Parties.

3.4 Transfer Taxes.

4. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller that all the following statements are true, accurate and correct:

4.1 Corporate Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of California.

4.2 Power and Authority: No Default.

(a) Buyer has all necessary corporate power and authority to enter into this Agreement and all agreements, assignments or other documents that Buyer is required to execute and deliver hereunder (the "*Buyer Ancillary Agreements*"). The execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements, and the consummation of all the transactions contemplated hereby and thereby, have been duly and validly authorized by Buyer by all necessary corporate action of Buyer's Board of Directors.

(b) This Agreement and the Buyer Ancillary Agreements, when executed and delivered by Buyer, will be duly and validly executed and delivered and will be the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) Neither the execution and delivery of this Agreement or the Buyer Ancillary Agreements by Buyer, nor the performance by Buyer of its obligations under this Agreement or under the Buyer Ancillary Agreements will (i) violate Buyer's Articles of Incorporation or Bylaws, or (ii) violate any law, statute, rule or regulation or order, writ, judgment, injunction or decree of any court, administrative agency or government body applicable to Buyer.

4.3 Authorization for this Agreement. No authorization, approval, order, consent of, or registration, declaration, qualification or filing with, any court, governmental department, bureau, agency, public board, commission, governmental authority or instrumentality (each, a "*Governmental Authority*") or other third party is required for the consummation by Buyer of the transactions contemplated by this Agreement and the Buyer Ancillary Agreements.

4.4 Valid Issuance of Stock.

5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller hereby represents and warrants to Buyer that each of the representations, warranties and statements contained in this Section 5 is true and correct.

For the purposes of this Agreement, the terms "*Material Adverse Effect*" and "*Material Adverse Change*" mean any change, event, circumstance or effect, whether or not such change, event, circumstance or effect is caused by or arises in connection with a breach of a representation, warranty, covenant or agreement of Seller in this Agreement, that is or is reasonably likely to be materially adverse to the Business or the Purchased Assets, or the financial condition, value, status or prospects of the Business, or the Purchased Assets.

For the purposes of this Agreement, the Seller shall be deemed to have "*knowledge*" of any fact, circumstance, event or other matter known to any of the Listed Persons (as defined below), or that would have been known by any Listed Person after reasonable inquiry by such Listed Person.

5.1 Power and Authority; No Default Upon Transfer.

(a) Seller has all necessary corporate power and authority to enter into and perform its obligations under this Agreement, and all agreements, assignments or other documents that Seller is required to execute and deliver hereunder (the "*Seller Ancillary Agreements*"). The execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements, and the consummation of all the transactions contemplated hereby and thereby, have been duly and validly authorized by Seller by all necessary corporate action of Seller's Board of Directors and stockholders.

(b) This Agreement and the Seller Ancillary Agreements, when executed and delivered by Seller, will be duly and validly executed and delivered and will be the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(c) Neither the execution and delivery of this Agreement or the Seller Ancillary Agreements by Seller, nor the performance by Seller of its obligations under this Agreement or under the Seller Ancillary Agreements, will (a) conflict with, or (with or without notice or lapse of time, or both) result in a termination, default, breach, violation or impairment of (i) any provisions of Seller's Amended and Restated Certificate of Incorporation or Bylaws, (ii) any loan, note, indenture, mortgage, deed of trust, security agreement, contract, Assigned Contract, license, lease or other agreement to which Seller is a party or by which Seller or any of the Purchased Assets is bound, or (iii) any law, statute, rule or regulation or order, writ, judgment, injunction or decree of any Governmental Authority applicable to the Seller, the Business or the Purchased Assets, or (b) result in the creation of Encumbrances on any of the Purchased Assets. None of the bulk sales, bulk transfer or similar provisions under the laws of the commercial code of any state applies to the transactions contemplated by this Agreement and the Seller Ancillary Agreements.

5.2 Assets; Title. The Purchased Assets include all property, assets, technology or Intellectual Property, tangible or intangible, agreements and rights necessary for Buyer to operate the Business after the Closing in a manner substantially equivalent to the manner in which Seller is currently operating the Business. Seller holds good and marketable title to all of the Purchased Assets, free and clear of all Encumbrances. Title to all the Purchased Assets is freely transferable from Seller to Buyer without obtaining the consent or approval of any person, except such consents and approvals as are listed in Schedule 5.2 and have been obtained by Seller. The Business Records are complete and accurate in all material respects. Since December 31, 2002, neither Seller nor any Seller Affiliate has disposed of or terminated any assets that would otherwise fall within the definition of Purchased Assets, except in the ordinary course of business or as otherwise may be disclosed in Schedule 5.2. All tangible Purchased Assets are located at 100 Marine Parkway, Suite 200, Redwood City, CA 94065.

5.3 Tangible Assets. Schedule 1.2(g) sets forth a true, complete and accurate description of each item, or each group of like items (stating the number), of the Tangible Assets, which description identifies (i) the location of each such item or group of items, (ii) to the extent available, original acquisition date and cost of such items. The Tangible Assets are in good working condition and repair, ordinary wear and tear excepted, usable in the ordinary course of business and are adequate and sufficient for all current operations of the Business.

5.4 Financial Information; Liabilities. The financial information provided by Seller to Buyer with respect to the Business are based upon financial data prepared by Seller, on a basis consistent with past practice, in accordance with the books and records of Seller and fairly present the financial position and results of operations of the Business. Seller has no Liabilities of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due that have not been disclosed to Buyer in writing.

5.5 Litigation. Except for threatened counterclaims in the action described in Schedule 5.5, there is no claim, action, suit or proceeding pending or, to Seller's knowledge, threatened, against Seller (including but not limited to any claim, action, suit or proceeding relating to or affecting the Business or the Purchased Assets), at law, in equity, by way of arbitration or before any Governmental Authority or arbitrator that might reasonably be expected to affect the Business, the Purchased Assets, the Assumed Liabilities or the Listed Persons or result, either individually or in the aggregate, in any Material Adverse Change nor is Seller aware of any reasonable basis therefor. There are no judgments, decrees, injunctions or orders of any Governmental Authority or arbitrator against Seller affecting the Purchased Assets or the Business. Seller has not, nor does Seller intend to, initiate any claim, action, suit or proceeding that might affect the Business, the Purchased Assets, the Assumed Liabilities or the Listed Persons.

5.6 Contracts and Commitments.

5.7 Intellectual Property.

(a) Schedule 5.7(a) sets forth a complete list of all registered patents, trademarks, copyrights, domain names and service marks, and any applications therefor in respect of any of the foregoing owned by Seller and included in the SM Intellectual Property, and specifies, where applicable, the jurisdictions in which the rights to SM Intellectual Property have been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners. All registered patents, trademarks, service marks and copyrights owned by Seller and set forth in Schedule 5.7(a) are valid and subsisting.

(b) Seller owns, or has the valid right or license to use, possess, sell, license, copy, distribute, market, advertise, dispose of and has the right to bring actions for the infringement of, and where necessary, has made timely and proper application for, all SM Intellectual Property that is used in, or required for the conduct of, the Business as presently conducted or as presently proposed to be conducted, or that comprise the Purchased Assets. Except as disclosed in Schedule 5.7(b), Seller has not granted to any third party any outstanding licenses or other rights to any of the SM Intellectual Property and Seller is not liable, nor has Seller made any contract or arrangement whereby it may become liable, to any person for any royalty or other compensation for the use of any SM Intellectual Property. Schedule 5.7(b) lists all contracts, licenses and agreements to which Seller is a party with respect to any SM Intellectual Property, including any agreements providing for the right of Seller to use third-party intellectual property or technology in connection with or as part of the Business or Purchased Assets (the "*Seller IP Rights Agreements*") and further identifies all third-party Intellectual Property or technology that is incorporated in, is, or forms part of the Purchased Assets or is otherwise used in the Business, including (but not limited to) Intellectual Property or technology licensed under contracts, agreements and licenses that are Excluded Assets. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and in the Seller Ancillary Agreements will not constitute a material breach of or default under any Seller IP Rights Agreement, will not cause the forfeiture or termination or give rise to a right of forfeiture or termination, of any Seller IP Rights Agreements or materially impair the right of Buyer, following the Closing, to develop, use, sell, license or otherwise commercially exploit in any manner any SM Intellectual Property or any portion thereof.

(c) None of the Purchased Assets has violated or infringed upon, or is violating or infringing upon, or misappropriates, any patent, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. There is no pending or, to the knowledge of the Seller, threatened claim or litigation contesting the validity, ownership or right to use, sell, license or dispose of any SM Intellectual Property nor, to the knowledge of Seller, is there any basis for any such claim, nor has Seller received any written notice asserting that any SM Intellectual Property or the proposed use, sale, license or disposition thereof conflicts or will conflict with the rights of any other party, nor, to the knowledge of Seller, is there any basis for any such assertion. No SM Intellectual Property is subject to any outstanding order, judgment, decree, stipulation or agreement related to or restricting in any manner, the licensing, sale, assignment, transfer or conveyance thereof by Seller.

REDACTED

(d)

(e)

(f)

(g)

REDACTED

(b)

5.8 Compliance with Laws. In the operation of the Business, Seller has materially complied with all applicable laws, rules, regulations and orders of federal, state, local and foreign governments (including but not limited to all export control laws and regulations of the United States of America or any Governmental Authority) and Seller is not in default with respect to any order, judgment, writ, injunction, decree, award, rule or regulation of any Governmental Authority or arbitrator that restrains or limits the operations of the Business or the use of the Purchased Assets. Seller holds all material permits, licenses and approvals from, and has made all material filings with, Governmental Authorities (and quasi-governmental authorities), that are necessary and/or legally required for Seller to conduct its present business without any violation of applicable law ("*Governmental Permits*") and all such Governmental Permits are in full force and effect. Seller has not received any notice or other communication from any Governmental Authority regarding (i) any actual or possible violation of law or any Governmental Permit or any failure to comply with any term or requirement of any Governmental Permit, or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Permit.

5.9 Employee Matters.

(a)

REDACTED

(b)

(c)

(d)

5.10 Authorization for this Agreement. No order, authorization, approval, consent or waiver of, or registration, qualification, designation, declaration or filing with any Governmental Authority is required for the consummation by Seller of the transactions contemplated by this Agreement. No consents or licenses from any person, or payment to any person, are necessary to enable Seller to enter into, and to perform its obligations under, this Agreement and the Seller Ancillary Agreements, and to enable Buyer to operate the Business substantially in the manner in which Seller has operated same.

5.11 Taxes.

REDACTED

5.12 Material Misstatements or Omissions. No representation or warranty by Seller in this Agreement, or in any document, statement, certificate or schedule furnished or to be furnished to Buyer by (or on behalf of) Seller pursuant thereto, contains, or will when furnished contain, any untrue statement of a material fact, or omits, or will then omit to state, a material fact necessary to make any statement of facts contained herein or therein not materially misleading. There have been no events or transactions, or information that has come to the attention of Seller that, as related directly to Seller, the Business or the Purchased Assets, could reasonably be expected to have a Material Adverse Effect.

5.13 Fair Consideration; No Fraudulent Conveyance. The transfer of the Purchased Assets to Buyer as contemplated by this Agreement and the Seller Ancillary Agreements is made in exchange for fair and equivalent consideration, and Seller is not now insolvent and Seller will not be rendered insolvent by the sale, transfer and assignment of the Purchased Assets as contemplated by this Agreement and the Seller Ancillary Agreements. Seller is not entering into this Agreement and the transactions contemplated hereby with the intent to defraud, delay or hinder its creditors. The transaction contemplated in this Agreement and the Seller Ancillary Agreements will not constitute a fraudulent conveyance, or otherwise give rise to any right of any creditor of Seller whatsoever to any of the Purchased Assets in the hands of Buyer after the Closing.

5.14 Investment Representations.

(a) Purchase for Own Account.

(b) Disclosure of Information.

REDACTED

(c) Investment Experience.

(d) Restricted Securities.

5.15 Brokerage and Finder's Fees.

5.16 Organization. Seller is a corporation duly organized, validly existing, and qualified to transact business under the laws of the State of Delaware. Seller is duly qualified to transact business and is in good standing in all jurisdictions where the failure to be so qualified would not have a Material Adverse Effect. Seller has all necessary corporate power and authority to own and use the Purchased Assets and to operate the Business as currently conducted and as proposed to be conducted. Seller has delivered to Buyer true and correct copies of its Amended and Restated Certificate of Incorporation and Bylaws, as in effect on the date hereof. Seller has no direct or indirect interest in any corporation, limited liability company, partnership, joint venture or other entity.

6. COVENANTS OF SELLER.

6.1 Further Assurances and Asset Transfers.

(a) Before and after the Closing, and subject to the terms of this Agreement, Seller will (i) file any notice, statement or other communication, (ii) execute and deliver all such other and additional assignments, instruments, endorsements, notices, releases, undertakings and other documents, and (iii) do all such other acts and take such further actions, all as may be reasonably requested by Buyer for the purpose of effecting the transfer of Seller's title to the Purchased Assets or as necessary to assure to Buyer all the rights and interests granted or intended to be granted under this Agreement. Seller hereby appoints Buyer as its attorney-in-fact for the limited purpose of executing such assignments, instruments, endorsements, notices, releases, undertakings and other documents should Seller be unable or unwilling to do so.

(b) From and after the date of the Closing, Seller agrees to convey, transfer, and assign to Buyer or a Buyer Affiliate, free and clear of all Encumbrances, any tangible or intangible rights, properties or assets then held by Seller (i) that are necessary to permit Buyer or such Buyer Affiliate to conduct, operate and maintain the Business as currently conducted, (ii) that are among the Purchased Assets, including without limitation, the Assigned Contracts, (iii) the conveyance, transfer or assignment of which would have been necessary for representations and warranties of Seller herein to be true and correct as of the date of the Closing, or (iv) the conveyance, transfer or assignment of which was or is required by the covenants of Seller contained in this Agreement. To the extent that any Assigned Contract was not assigned to Buyer or a Buyer Affiliate because of a limit on assignability of such Assigned Contract, Seller shall take all actions necessary to pass through to Buyer or such Buyer Affiliate all benefits of such Assigned Contracts and Buyer or such Buyer Affiliate shall perform all obligations of Seller thereunder; provided, however, that compliance of Seller with this sentence shall not excuse Seller from any breach of the representations, warranties and covenants of the Seller, resulting from such non-assignment.

6.2 Prohibited Actions. Seller shall not, without Buyer's prior written consent:

- (i) grant any Encumbrance on any of the Purchased Assets;
- (ii) sell, transfer or dispose of any of the Purchased Assets;
- (iii) change any of its accounting methods except as required by changes in GAAP or by Applicable Laws;
- (iv) amend or terminate any contract, agreement, arrangement, commitment or undertaking, including any license, to which it is a party that relates to the Business;
- (v) waive or release any right or claim that relates to the Purchased Assets or the Business;
- (vi) license any of the SM Intellectual Property, or acquire any Intellectual Property (or any license thereto) from any third party; or
- (vii) agree to do any of the things described in the preceding clauses (i) through (vi).

6.3 Consent to Third Parties. Prior to the Closing Date, Seller shall obtain the consent in writing of all persons necessary to permit Seller to assign and transfer all of the Purchased Assets (including, but not limited to, the Assigned Contracts) to Buyer, free and clear of all Encumbrances, and to perform its obligations under, and to conclude the transactions contemplated by, this Agreement and the Seller Ancillary Agreements in order that the performance hereof will not result in the termination of, or any violation, breach or default under, any Assigned Contracts or affect the Purchased Assets.

6.4 Confidential Information.

6.5 No Post-Closing Retention of Copies.

6.6 Taxes.

(a)

(b)

REDACTED

6.7 Post-Closing Audits and Governmental Inquiries.

6.8 Legal Requirements. Each of the parties hereto shall use its reasonable efforts to take promptly, or cause to be taken, all reasonable actions, and to do promptly, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any legal injunctions, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement.

6.9 Limit on Distribution of Purchase Price.

6.10 Survival of Covenants. Each of the covenants set forth in this Section 6 shall survive the Closing.

7. CONDITIONS TO CLOSING.

7.1 Conditions to Buyer's Obligations. The obligations of Buyer hereunder are subject to the fulfillment or satisfaction, on and as of the Closing, of each of the following conditions (any one or more of which may be waived by Buyer, but only in a writing signed by Buyer):

(a) **Accuracy of Representations and Warranties on Closing Date.** The representations and warranties of Seller set forth in this Agreement (a) that are qualified as to materiality will be true and correct and (b) that are not qualified as to materiality shall be true and correct in all material respects, in each case on and as of the Closing with the same force and effect as if they had been made at the Closing Date (except for any such representations or warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties that are qualified as to materiality shall be true and correct, and such representations and warranties that are not qualified as to materiality shall be true and correct in all material respects, on and as of such specified date or dates), and at the Closing Buyer will have received a certificate to such effect executed by Seller's Chief Executive Officer, to the extent of his actual personal knowledge.

(b) **Covenants.** Seller will have performed and complied in all material respects with all of its covenants contained in this Agreement at or before the Closing (to the extent that such covenants require performance by Seller at or before the Closing), and at the

Closing Buyer will have received a certificate to such effect executed by Seller's Chief Executive Officer, to the extent of his actual personal knowledge.

(c) No Material Adverse Change. There shall have been no Material Adverse Change.

(d) Compliance with Law: No Legal Restraints: No Litigation. There will not be any issued, enacted or adopted, or threatened in writing by any Governmental Authority any order, decree, temporary, preliminary or permanent injunction, legislative enactment, statute, regulation, action, inquiry or investigation, or any judgment or ruling by any Governmental Authority that prohibits or renders illegal or imposes limitations on: (a) the transactions contemplated by this Agreement or any Ancillary Agreement; or (b) Buyer's right (or the right of any Buyer subsidiary) to own, retain, use or operate any of its products, properties or assets (including the Purchased Assets) on or after consummation of the transactions contemplated by this Agreement or seeking a disposition or divestiture of any such properties or assets. No litigation or proceeding will be pending for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement.

(e) No Order. No Governmental Authority shall have issued, promulgated, enforced or entered any decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that has the effect of making the transactions contemplated under this Agreement illegal or otherwise prohibiting consummation of such transactions.

(f) Stockholder Approval. This Agreement and the transactions contemplated by this Agreement will have been duly and validly approved and adopted by Seller's stockholders as required by applicable law and Seller's Amended and Restated Certificate of Incorporation and Bylaws.

(g) Opinion of Seller's Counsel.

(h) Delivery of Purchased Assets.

(i) Employment Acceptances.

REDACTED

(j) Settlement Agreements.

(k) Delivery of Other Closing Documents.

(l) Seller's Consents Obtained.

(m) Assignment and Assumption Agreement; Trademark Agreement.

7.2 Conditions to Seller's Obligations.

(a) Accuracy of Representations and Warranties on Closing Date. The representations and warranties of Buyer set forth in this Agreement (a) that are qualified as to materiality will be true and correct and (b) that are not qualified as to materiality shall be true and correct in all material respects, in each case on and as of the Closing with the same force and effect as if they had been made at the Closing Date (except for any such representations or warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties that are qualified as to materiality shall be true and correct, and such representations and warranties that are not qualified as to materiality shall be true and correct in all material respects, on and as of such specified date or dates), and at the Closing Seller will have received a certificate to such effect executed by a duly authorized officer of Buyer.

(b) Covenants. Buyer will have performed and complied in all material respects with all of its covenants contained in this Agreement at or before the Closing (to the extent that such covenants require performance by Buyer at or before the Closing), and at the Closing Seller will have received a certificate to such effect executed by a duly authorized officer of Buyer.

(c) Compliance with Law; No Legal Restraints; No Litigation. There will not be any issued, enacted or adopted, or threatened in writing by any Governmental Authority any order, decree, temporary, preliminary or permanent injunction, legislative enactment, statute,

regulation, action, inquiry or investigation, or any judgment or ruling by any Governmental Authority that prohibits or renders illegal or imposes limitations on the transactions contemplated by this Agreement or any Ancillary Agreement. No litigation or proceeding will be pending for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement.

(d) No Order. No Governmental Authority shall have issued, promulgated, enforced or entered any decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that has the effect of making the transactions contemplated under this Agreement illegal or otherwise prohibiting consummation of such transactions.

(e) Payment of Purchase Price.

(f) Assignment and Assumption Agreement.

(g) Employment Offer Letters.

(h) Consulting Agreements.

8. COVENANTS AND AGREEMENTS RELATED TO LISTED PERSONS.

8.1 Offers of Employment.

(a)

(b)

REDACTED

8.2 Employment Taxes.

8.3 Compensation; Contractual Obligations.

8.4 Severance Payments.

8.5 COBRA Payments.

8.6 Seller Employee Plan Claims; Life Insurance and Disability Coverage.

8.7 No Rights Conferred Upon Employees.

REDACTED

9. TERMINATION OF AGREEMENT

9.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Closing by the mutual written consent of Seller and Buyer.

9.2 Unilateral Termination. This Agreement may be terminated at any time prior to the Closing by:

(a) either Seller or Buyer, by giving written notice to the other if a court of competent jurisdiction or other Governmental Authority shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

(b) either Seller or Buyer, by giving written notice to the other, if the Closing shall not have been occurred by midnight Pacific Time on November 30, 2003; provided, however, that the right to terminate this Agreement pursuant to this Section 9.2(b) shall not be available to any party whose failure to perform in any material respect any of its obligations or covenants under this Agreement has been a principal cause of or results in the failure of any condition set forth in Section 7.1 or Section 7.2, as applicable, to be fulfilled.

(c) either Seller or Buyer if the other has committed a material breach of (a) any of such party's representations and warranties contained in this Agreement so that the conditions set forth in Section 7.1(a) or 7.2(a), as applicable, would not be satisfied; or (b) any of such party's covenants contained in this Agreement so that the conditions set forth in Section 7.1(b) or 7.2(b), as applicable, would not be satisfied, and has not cured such material breach within ten (10) days after the party seeking to terminate this Agreement has given the other party written notice of the material breach and its intention to terminate this Agreement pursuant to this Section 9.2(c); provided, however, that no cure period shall be required for a breach which by its nature cannot be cured.

9.3 No Liability for Termination. Termination of this Agreement by a party (the "*Terminating Party*") in accordance with the provisions of this Section 9 will not give rise to any liability or obligation on the part of the Terminating Party on account of such termination; provided, however, that nothing herein shall relieve a party from liability for a willful breach of this Agreement. The provisions of this Section 9 and of Section 11 shall survive any termination of this Agreement.

10. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

10.1 Survival of Representations and Warranties. All representations and warranties of Seller contained in this Agreement, and in the other agreements, certificates, schedules or exhibit delivered pursuant to this Agreement, will remain operative and in full force and effect, regardless of any investigation made by or on behalf of any of the parties to this

Agreement until the earlier of (a) the termination of this Agreement in accordance with its terms or (b) for a period of one year from the Closing Date (the "*Expiration Date*"). All representations and warranties of Buyer contained in this Agreement and the other agreements, certificates, schedules and exhibits delivered pursuant to this Agreement will remain operative and in full force and effect, regardless of any investigation made by or on behalf of any of the parties to this Agreement, until the earlier of (a) the termination of this Agreement in accordance with its terms or (b) the Closing Date.

11. MISCELLANEOUS.

11.1 Governing Law; Dispute Resolution.

(a) Governing Law. The internal laws of the State of California (irrespective of choice of law principles) will govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto. Any dispute between the parties hereunder including any Contested Claim ("*Dispute*") shall be settled by mandatory, final and binding arbitration in San Francisco, California and, except as herein specifically stated, in accordance with the commercial arbitration rules of the American Arbitration Association ("*AAA Rules*") then in effect. However, in all events, these arbitration provisions shall govern over any conflicting rules that may now or hereafter be contained in the AAA Rules. Either Buyer or Seller may commence the arbitration process called for by this Agreement by filing a written demand for arbitration with the American Arbitration Association and giving a copy of such demand to the other party to this Agreement. The parties will cooperate with each other in promptly selecting a single arbitrator, and in scheduling the arbitration proceedings in order to fulfill the provisions, purposes and intent of this Agreement. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof.

(b) Payment of Costs. The parties will bear the expense of deposits and advances required by the arbitrator in equal proportions, but either party may advance such amounts, subject to recovery as an addition or offset to any award. The arbitrator will determine the party who is the prevailing party and the party who is the non-prevailing party. The non-prevailing party will pay all reasonable costs, fees and expenses related to the arbitration, including reasonable fees and expenses of attorneys, accountants and other professionals incurred by the prevailing party, the fees of the arbitrator and the administrative fee of the arbitration proceedings. If such an award would result in manifest injustice, however, the arbitrator may apportion such costs, fees and expenses between the parties in such a manner as the arbitrator deems just and equitable.

(c) Burden of Proof. Except as may be otherwise expressly provided herein, for any Dispute submitted to arbitration, the burden of proof will be as it would be if the claim were litigated in a judicial proceeding governed by California law exclusively.

(d) Award. Upon the conclusion of any arbitration proceedings hereunder, the arbitrator will render findings of fact and conclusions of law and a final written arbitration award setting forth the basis and reasons for any decision reached (the "*Final Award*") and will deliver such documents to the Seller and Buyer, together with a signed copy of the Final Award. The

Final Award will constitute a conclusive determination of all issues in question, binding upon Buyer and Seller, and will include an affirmative statement to such effect.

(e) Timing. Seller, Buyer and the arbitrator will conclude each arbitration pursuant to this Section 11.1 as promptly as possible for the Dispute being arbitrated.

(f) Terms of Arbitration. The arbitrator chosen in accordance with these provisions will not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement.

11.2 Expenses. Buyer shall bear its own expenses (including, without limitation, the fees of its own attorneys, accountants, investment bankers, advisors and other professionals) incurred in connection with the negotiation and consummation of the transactions contemplated hereby. Buyer shall pay Seller's actual, reasonable attorney's fees directly associated with the transactions contemplated hereby, including Seller's dissolution and liquidation, not to exceed \$15,000. Seller shall bear the remainder of its own expenses (including, without limitation, the fees of its own attorneys over \$15,000 and all fees of its accountants, investment bankers, advisors and other professionals) incurred in connection with the negotiation and consummation of the transactions contemplated hereby, including Seller's dissolution and liquidation.

11.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be either hand delivered in person, sent by confirmed facsimile transmission, sent by certified or registered United States first-class mail, postage prepaid, or sent by nationally recognized overnight express courier. Such notice will be effective (i) upon receipt if hand delivered or sent by facsimile, (ii) five days after mailing if sent by mail, and (iii) one day after dispatch if sent by express courier, to the following addresses, or such other addresses as any party may notify the other parties in writing in accordance with this Section 11.3.

(a) If to Seller:

LiquidPrice.com, Inc.
100 Marine Parkway, Suite 200
Redwood City, CA 94065
Attention: Chief Executive Officer
Fax: (650) 595-2813

REDACTED

With copy to:

Francisco X. Márquez
Fax: (650) 618-2032

(b) If to Buyer:

Softface, Inc.
2121 N. California Boulevard
Suite 570
Walnut Creek, CA 94596
Attention: John Machusic
Fax: 925-941-0061

With copy to:

Fenwick & West LLP
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111
Attention: David Michaels
Fax: (415) 281-1350

11.4 Entire Agreement.

11.5 Amendment; Waiver. Any term or provision of this Agreement may be amended only by a writing signed by Seller and Buyer. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

11.6 Execution in Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.7 Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of each other party; except that Buyer may assign this Agreement (and all related agreements) by operation of law or in connection with any merger, consolidation or sale of all or substantially all Buyer's assets or in connection with any similar transaction.

11.8 Benefit and Burden. This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective successors and permitted assigns.

11.9 Severability. If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

11.10 Construction of Agreement. The language hereof will not be construed for or against either party. When a reference is made in this Agreement to Exhibits or Schedules, such reference shall be to an Exhibit or Schedule to this Agreement unless otherwise indicated. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. The words "*include*," "*includes*" and "*including*" when used herein shall be deemed in each case to be followed by the words "*without limitation*." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When reference is made herein to "*the business of*" an entity, such reference shall be deemed to include the business of all direct and indirect subsidiaries of such entity. Reference to the subsidiaries of an entity shall be deemed to include all direct and indirect subsidiaries of such entity. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

11.11 No Joint Venture. Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other party. No party will have the power to control the activities and operations of any other and their status is, and at all times, will continue to be, that of independent contractors with respect to each other. No party will have any power or authority to bind or commit any other. No party will hold itself out as having any authority or relationship in contravention of this Section.

11.12 Public Announcement.

11.13 Absence of Third Party Beneficiary Rights. No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, stockholder, partner or any party hereto

REDACTED

or any other person unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the parties to this Agreement.

11.14 Attorneys' Fees.

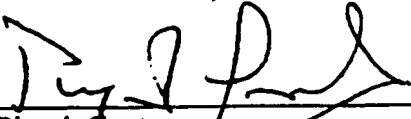
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REDACTED

IN WITNESS WHEREOF, Buyer and Seller executed and delivered this Agreement by their duly authorized representatives as of the Agreement Date.


SELLER:

LIQUIDPRICE.COM, INC.

By: 
Piyush Gupta
Its: Chief Executive Officer

BUYER:

SOFTFACE, INC.

By: 
Its: OLIVIER SIZOUET

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

REDACTED

LIST OF EXHIBITS

- Exhibit A: Matters to be Covered in the Opinion of Counsel to Seller.**
- Exhibit B: Form of Employment Letter**
- Exhibit C: Form of Consulting Letter**
- Exhibit D: Form of Settlement Agreement**
- Exhibit E: Form of Bill of Sale**
- Exhibit F: Patent Assignment**

REDACTED

EXHIBIT A

MATTERS TO BE COVERED IN THE OPINION OF COUNSEL TO SELLER.

REDACTED

EXHIBIT B

EMPLOYMENT LETTER

REDACTED

REDACTED

REDACTED

EXHIBIT C

FORM OF CONSULTING LETTER

(
REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

EXHIBIT A

Sample Statement of Work

REDACTED

REDACTED

EXHIBIT D

**SETTLEMENT AGREEMENT AND
FULL AND FINAL RELEASE OF CLAIMS**

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

EXHIBIT E

BILL OF SALE AND ASSIGNMENT AGREEMENT

This BILL OF SALE AND ASSIGNMENT (this "*Bill of Sale*") is made and entered into as of this November __, 2003 (the "*Agreement Date*"), from LiquidPrice.com, Inc., a Delaware corporation ("*Seller*") to Softface, Inc., a California corporation ("*Buyer*"). Seller and Buyer are parties to an Asset Purchase Agreement, dated as of November __, 2003 (the "*Purchase Agreement*"). Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement. This Bill of Sale is being made and entered into pursuant to the Purchase Agreement.

1. Sale and Assignment of Purchased Assets. Pursuant to the Purchase Agreement, Buyer has on the date hereof purchased the Purchased Assets (excluding the Excluded Assets), and assumed the Assigned Contracts, from Seller as provided in the Purchase Agreement. In accordance with and subject to the terms and conditions of the Purchase Agreement, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, bargain, transfer, convey and deliver to Buyer, all right, title and interest in and to the Purchased Assets and the Assigned Contracts.

2. Initial Purchase Price. Seller hereby acknowledges receipt in full of the entire Purchase Price as of the Closing for the Purchased Assets from Buyer.

3. Effect of Agreement. Nothing in this Bill of Sale shall, or shall be deemed to, modify or otherwise affect any provisions of the Purchase Agreement or affect or modify any of the rights or obligations of the parties under the Purchase Agreement. In the event of any conflict between the provisions hereof and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall govern and control.

4. Further Assurances. Seller, at the reasonable request of Buyer, shall execute and/or cause to be delivered to Buyer such other assignments, transfers, conveyances, and other instruments and documents and shall take such other actions as may be reasonably necessary or desirable to evidence, vest, perfect and confirm, document and carry out the sale of the Purchased Assets and Buyer's ownership of all right, title and interest therein contemplated by the Purchase Agreement and this Bill of Sale.

[The remainder of this page is intentionally left blank.]

REDACTED

IN WITNESS WHEREOF, Seller has executed this Bill of Sale and Assignment Agreement
on the date first written above.

LIQUIDPRICE.COM, INC.

By: _____

Name:

Title:

[Signature page to Bill of Sale and Assignment Agreement]

REDACTED

EXHIBIT F

PATENT ASSIGNMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, LiquidPrice.com, Inc. a Delaware corporation, having a place of business at _____ ("ASSIGNOR"), has sold, assigned, and transferred and does hereby sell, assign, and transfer to Softface, Inc., a California corporation, having a place of business at _____ ("ASSIGNEE"), for itself and its successors, transferees, and assignees, the following:

1. The entire worldwide right, title, and interest in all inventions and improvements ("SUBJECT MATTER") that are disclosed in the following applications and Letters Patents ("PATENT RIGHTS"):

Country:	Patent Application Serial No.:	Title:	Filing Date:

Country:	Letters Patent No.:	Title:	Issue Date:

and;

2. The entire worldwide right, title, and interest in and to:
(a) the PATENT RIGHTS, including any right of priority; (b) any divisional, continuation, substitute, renewal, reissue, and other related applications thereto which have been or may be filed in the United States or elsewhere in the world; (c) any patents which may be granted on the applications set forth in (a) and (b) above; and (d) the right to sue in its own name and to recover for past infringement of any or all of any applications or patents issuing therefrom.

ASSIGNOR agrees to do the following, when requested, and without further consideration, in order to carry out the intent of this Assignment: (1) execute all oaths, assignments, powers of attorney, applications, and other papers necessary or desirable to fully secure to ASSIGNEE the rights, titles and interests herein conveyed; (2) communicate to ASSIGNEE all known facts relating to the SUBJECT MATTER of the above-identified patent applications and Letters Patents; and (3) generally do all lawful acts that ASSIGNEE shall consider desirable for securing, maintaining, and enforcing worldwide patent protection relating to the SUBJECT MATTER of the above-identified patent applications and Letters Patents and for vesting in ASSIGNEE the rights, titles, and interests herein conveyed. ASSIGNOR further agrees to provide any successor, transferee, assignee, or legal representative of ASSIGNEE with the benefits and assistance provided to ASSIGNEE hereunder.

ASSIGNOR represents that ASSIGNOR has the rights, titles, and interests to convey as set forth herein, and covenants with ASSIGNEE that the ASSIGNOR has made or will make hereafter no assignment, grant, mortgage, license, or other agreement affecting the rights, titles, and interests herein conveyed.

Duly Authorized Representative of ASSIGNOR

Date of Signature

[Name]
[Title]

_____, 2001

REDACTED

[Company with address]

REDACTED

Title of Document: **ASSIGNMENT**

Assignor:

Assignee:

State of _____

County of _____

On _____ before me, _____ personally

[DATE]

[NOTARY PUBLIC]

appeared _____ personally known to me or proved to me on the basis of

satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] authorized capacity, and that by [his/her] signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary

Notary Seal

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